UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.338
30 November 1998

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 338th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.338/Add.1.

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GE.98-16251 (E)

The meeting was called to order at 10.10 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

1. The CHAIRMAN noted that reports submitted to the Committee had shown in a number of cases that ill-treatment affected women differently from men, and that the treatment of certain categories of children, especially street children, came within the scope of article 1 or article 16. The Committee had been also troubled by some cases of discrimination, although they did not, strictly speaking, come within the scope of article 1. But the Committee tended to gloss over such issues. It might therefore wish to consider appointing three rapporteurs to deal, respectively, with specific problems relating to the status of women, the treatment of children and the question of discrimination. They would examine States parties' reports from those three separate angles in order to draw the Committee's attention to points that might otherwise be overlooked. He invited the members of the Committee to consider the suggestion and possibly offer their services for such duties.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Sri Lanka (CAT/C/28/Add.3)

2. At the invitation of the Chairman, Mr. Palihakkara, Mr. Yapa, Mr. Grero and Mr. Arachichi (Sri Lanka) took places at the Committee table.

3. The CHAIRMAN welcomed the delegation and invited it to introduce the initial report of Sri Lanka (CAT/C/28/Add.3).

4. Mr. PALIHAKKARA (Sri Lanka) said that Sri Lanka was a party to 13 international human rights instruments, including the Convention against Torture, and was firmly committed to the promotion and protection of human rights despite all the difficulties confronting the authorities in their struggle to stamp out the terrorist threat which had been plaguing Sri Lanka for so many years. His Government was convinced that in order to cope with such problems, they had to be discussed openly and democratically. Accordingly, it attached great importance to any exchanges it might have with international human rights treaty monitoring bodies among others. It was also awaiting with interest the views of the Committee against Torture on its initial report as well as any suggestions and criticisms the Committee might make to help Sri Lanka improve the procedures it had adopted to give effect to the Convention against Torture.

5. The principle of protection against ill-treatment, embodied in Sri Lanka's legislation since 1883, had been elaborated and consolidated by the 1972 and 1978 Constitutions. In 1982, Sri Lanka had deposited with the United Nations Secretary-General the Unilateral Declaration against Torture, which had been based on the Declaration adopted by the United Nations General Assembly in 1975. In January 1994, it had acceded to the Convention against Torture, which had entered into force one month later, and had incorporated it into domestic legislation in November of that year by Act No. 22 of 1994, thereby strengthening the body of legal measures being

used to curb torture. In point of fact, it seemed that the definition of torture in Sri Lanka's legislation was broader than that contained in the Convention.

6. In the report under consideration, the Sri Lankan authorities had sought to highlight the various elements of the above-mentioned legislation, stressing in particular the action taken to combat acts contrary to the provisions of the law and the institutions set up to enforce it, as well as the international cooperation on which they had drawn to help them in their work. They were aware that it was not enough to adopt laws and regulations to combat torture: legal principles must be translated into reality and backed by new legislative, judicial, administrative and other measures.

7. There had been reports of abuses committed by certain members of the security forces in the context of counter-terrorist activities. The same accusation had been levelled against members of the police. It was important to combat such practices, which were completely at variance with the code of conduct for law enforcement officials. His Government was confident that those difficulties could be overcome by Act No. 22 of 1994, which had increased the powers of prosecuting bodies to investigate and prosecute such cases.

8. Moreover, the new constitution being drafted would further strengthen provisions designed to combat acts of torture, inter alia by authorizing Sri Lankan courts to hear cases involving violations of the fundamental right of every individual not to be tortured or subjected to cruel, inhumane or degrading treatment or punishment. That right could not be restricted in any way. Arbitrary arrest, which usually prefigured acts of torture, would also be prohibited. Moreover, transparency would be ensured by the requirement that any arrests or detentions had to be reported to the proper authority in order to minimize any danger of torture. An important development was that the new constitution would institute the principle of litigation in the public interest, which could play a key role as a deterrent.

9. At the administrative level, the law enforcement agencies had devised various systems under which law enforcement officials at all levels as well as members of the security forces combating terrorist or subversive activities were required to report any arrests or detentions to their superiors and to notify next of kin. In that way, every detention was acknowledged and noted in a register. It had been found that that was the best way of preventing terrorists or individuals engaged in subversive activities from being tortured. Furthermore, officers had to report arrests within 48 hours to one of the 10 regional offices of the National Human Rights Commission. Lastly, a presidential directive dated 17 September 1997 had issued the security forces detailed instructions on the treatment of detainees. Wilful failure to report an arrest or detention was a criminal offence. The rank and file members of the army and police had been informed that any act of torture would be dealt with under Act No. 22 of 1994.

10. The report under consideration gave an account of the machinery set up to ensure compliance with the measures adopted to curb torture. For example, the National Human Rights Commission, an independent body created by an Act of Parliament in 1997, constantly monitored the security and welfare of

detainees, its members making unannounced visits to police stations and places of detention. The Commission's regional offices served as sources of information as well as a forum for handling complaints. The situation in prisons was also monitored by a large number of non-governmental and other organizations. In 1989, the International Committee of the Red Cross had been invited to open an office in the country, and its representatives enjoyed unrestricted access to all places of detention, where they could have confidential interviews with detainees; and they could also file reports on how detainees were treated and notify the competent authorities of any problems encountered.

11. Mr. MAVROMMATIS (Country Rapporteur for Sri Lanka) said that the initial report of Sri Lanka, although submitted more than two years late, was in keeping with the Committee's guidelines. However, the core document (HRI/CORE/1/Add.48) should probably be updated: further information should be included on guarantees of the independence of the courts, the structure of the judiciary and the judicial system and the role of the country's main institutions and the Office of the Attorney-General in defending human rights.

12. Referring to the general situation in Sri Lanka, he noted that for years the Government had been combating the terrorist acts of a secessionist movement. However, the violence practised by partisans of that movement seemed to have incited members of the armed forces and security forces to respond in kind, and if specific effective measures were not taken, the situation might well continue. Despite numerous allegations of acts of torture and ill-treatment by the security forces and the police, Sri Lanka had decided to accede to the Convention against Torture in 1994, thus demonstrating its firm intention of putting an end to such abuses. That appeared to be confirmed by the information provided by the Sri Lankan delegation. According to studies by the University of Jaffna, the situation had improved following the most recent political changes and measures taken by the armed forces themselves. Massive reprisals were said to have become the exception, and that was encouraging. However, court decisions revealed that members of the police force continued to engage in illegal acts, including torture, a circumstance which must be ascribed to the failure to punish such acts swiftly and effectively. In his view, all too often the courts ordered disciplinary sanctions for the perpetrators and compensation for the victims, although in many cases the offenders should have been prosecuted. He called upon the Government of Sri Lanka to give thought to other measures it might take to combat the practice of torture more effectively.

13. As noted in the report (para. 11), Sri Lanka had decided to ratify the Optional Protocol to the International Covenant on Civil and Political Rights. Why, then, did it not consider making the declaration under article 22 of the Convention? More generally, he wondered about the status of the Convention in Sri Lankan law: which took precedence in the event of a conflict between domestic law and the Convention? Paragraph 6 of the report stated that legislation had been adopted to give effect to Sri Lanka's obligations under the Convention. Did that mean that the Convention was not directly applicable in the country? Also, could the courts base their decisions on recommendations and observations of the Committee against Torture or, for example, of the Human Rights Committee?

14. Turning to the implementation of the Convention article by article, he noted that nothing was said in the report about article 1, which contained a definition of torture. Although the information in the report relating to article 2 was to a certain extent a reply, he was not convinced that the definition adopted by the Sri Lankan authorities was broader than that in the Convention. Among other things, the Convention did not give the term "suffering inflicted" a more restrictive meaning than the Supreme Court in its decisions (para. 48 of the report). Unlike the Convention, the decisions considered by the Supreme Court did not examine in detail the purposes for which the suffering was inflicted; in his view, that might well offer members of the security forces and the police a loophole. Although Act No. 22 of 1994 defined those purposes in section 12, it did not address the question of unusual punishment. The Sri Lankan authorities should study the question more closely and consider broadening the definition of torture in domestic law if it proved more restrictive than the definition in article 1 of the Convention.

15. Referring to article 2 of the Convention, he paid tribute to the judiciary for the action it had taken to combat torture, but felt that the legislation on the subject revealed a tendency to emphasize compensation rather than prevention. That deprived measures to curb torture of some of their force and might even be conducive to impunity.

16. Recalling that the security forces and the police were often reluctant to take disciplinary measures against their own members, he asked whether machinery existed to guarantee the independence of investigations when allegations were directed against such persons.

17. He would also like to know what conditions governed administrative detention. Welcoming the recent establishment of the National Human Rights Commission and the planned opening of regional offices of the Commission, as in Jaffna, he would appreciate further information on how the members of the Commission were appointed and how its recommendations and decisions were followed up.

18. As to paragraphs 72 and 73 of the report, which dealt with rules of evidence, he noted with concern that the emergency regulations provided for a departure from the normal rules of evidence, under which confessions obtained by illegal means were not admissible. He asked whether allegations of forced disappearance received the attention they deserved and whether, for example, investigations were being conducted or cases prosecuted. Moreover, could the delegation respond to allegations of the existence of secret places of detention?

19. With respect to article 3 of the Convention, he asked whether Sri Lanka's Extradition Law covered the second paragraph of that article, under which the authorities must take into account, where applicable, the existence of a consistent pattern of human rights violations. Regarding article 7 of the Convention, he inquired whether there was any machinery to guarantee the independence of the judiciary; that involved not only the appointment of judges but also other criteria, of which irremovability was one of the most important. Furthermore, given that it was in the first few hours of police custody that acts of torture or ill-treatment usually occurred, from what moment was a suspect entitled to the assistance of counsel?

20. Lastly, in respect of article 16 of the Convention, he would like to know about prison conditions, how complaints lodged by detainees were handled and whether all such matters were covered by a particular law.

21. Mr. YU Mengjia (Alternate Country Rapporteur for Sri Lanka) presented his deepest sympathy to the State party on the assassination, the day before, of the Mayor of Jaffna, which typified the situation prevailing in Sri Lanka. His own questions would focus more particularly on articles 10 to 15 of the Convention. Concerning article 10, he welcomed the importance attached to human rights in training members of the security forces, the police and prison guards. Military law and humanitarian law were also taught to the members of the armed forces. Had the results of that training been assessed, and was the prohibition of torture a separate subject?

22. With regard to article 11 of the Convention, he noted that a Parliamentary Select Committee on Constitutional Reform had been appointed, that in 1993 some emergency regulations had been amended and that arrest and detention provisions had been reviewed. In that general context, he asked whether independent machinery existed to hear complaints of ill-treatment. Moreover, what was the maximum duration of pre-trial detention, in normal circumstances as well as under the emergency regulations? Was a suspect entitled to have immediate access to counsel of his choice? If a person in police custody was indigent, was he entitled to a court-appointed lawyer?

23. Was it true, as a number of sources had reported, that the emergency regulations and the Anti-Terrorism Law were often invoked to depart from the rights guaranteed under both the Convention against Torture and other international instruments? Also, how was work on the new constitution progressing?

24. Referring to articles 12 and 13 of the Convention, which required the State party to proceed to a prompt and impartial investigation of allegations of torture, he inquired what measures, if any, ensured the impartiality of investigations conducted in cases of complaints against police officers. Regarding allegations of disappearances which, according to certain sources, were sometimes associated with torture, he asked whether complaints alleging such acts immediately gave rise to an investigation and, where the allegations were unfounded, whether the State party issued an official denial. As to paragraph 116 of the report, which stated that every police officer could not only require the attendance of persons who were able to give information but also examine them orally and search them, he wondered whether a warrant was needed.

25. With respect to article 14, he asked whether the victim of an act of torture had the right to redress and compensation and whether, if the torturer was insolvent, responsibility devolved upon the State party. More generally, he noted with concern that according to a number of sources the State party readily consented to compensate the victims but did not institute proceedings against the perpetrators. Were those allegations true? Lastly, there seemed to be an inconsistency between the provisions of legislation on certain serious offences affecting State security, which provided that confessions made in certain cases were admissible, and article 15 of the Convention. Could the complete text of that law be made available to the Committee?

26. Mr. SØRENSEN said that the Committee was aware of the difficulties facing Sri Lanka in its fight against terrorism, but emphasized that only legal methods were admissible. He therefore regretted that acts of torture were continuing but expressed appreciation to the State party for recognizing the importance of training as a way of preventing them and noted that several paragraphs of the report were devoted to the efforts being made to that end. Regarding paragraphs 104 and 105, he asked whether the medical professions were directly involved in training the police and prison guards. One of the most effective ways of curbing torture was to modify police attitudes and behaviour, and in that context, doctors were in a good position to make them understand that torture was a violation of the dignity not only of the victim, but also that of the perpetrator and society as a whole.

27. He asked whether the committees and commissions responsible for reviewing specific laws or practices concerning human rights (para. 108) acted systematically, whether each examination gave rise to a report and whether such reports were made public.

28. He paid tribute to the many non-governmental organizations which provided comprehensive medical, psychological and counselling services to the victims of torture. In that connection, he referred to the importance of 26 June, the date commemorating the entry into force of the Convention against Torture and which the General Assembly had declared United Nations International Day in Support of Victims of Torture. He called upon the State party to consider making the declarations under articles 21 and 22 of the Convention and also to make another contribution to the United Nations Fund for Victims of Torture and, more generally, to commemorate the Day officially, thereby recognizing the suffering of the victims.

29. Mr. ZUPAN□I□ said that, under the draft constitution, the Supreme Court was to have the power of judicial review of future legislation (para. 15 of the report). Did that mean that current legislation would remain in force even if it conflicted in certain respects with the provisions of the new constitution? With regard to the question of compensation, he asked whether responsibility was assumed by the person found guilty or by the State.

30. The CHAIRMAN thanked the delegation of Sri Lanka and invited it to reply to the Committee's questions at the next meeting

31. The delegation of Sri Lanka withdrew.

The first part (public) of the meeting rose at 11.20 a.m.